



STATE BOARD OF EQUALIZATION STAFF LEGISLATIVE BILL ANALYSIS

Date Introduced:	12/09/04	Bill No:	SB 31
Tax:	Water Rights Fee	Author:	Florez
Related Bills:			

This analysis will only address the bill's provisions that impact the Board.

BILL SUMMARY

Among other things, this bill would:

- Require the annual permit or license water rights fee to be imposed based upon the number of acre-feet of water covered by the permit or license,
- Precludes the charging of duplicate annual permit or license fees to holders of multiple diversion or use licenses or permits, and
- Places prescribed total annual revenue caps on the annual water rights fee.

ANALYSIS

Current Law

Among other things, Chapter 8 (commencing with Section 1525) of Part 2 of Division 2 of the Water Code requires each person or entity who holds a permit or license to appropriate water, and each lessor of water, to pay an **annual fee** according to a fee schedule established by the State Water Resources Control Board (SWRCB).

Section 1529 requires each person or entity that files a Notice of Extraction and Diversion, as specified, to pay an **annual fee** according to a fee schedule established by the SWRCB.

Section 1537 requires the Board to collect all **annual fees** and other fees referred by the SWRCB for collection. The fees are collected pursuant to the Fee Collection Procedures Law (Part 30 (commencing with Section 55001) of Division 2 of the Revenue and Taxation Code). The Board, however, does not handle appeals or claims for refund related to the fees. Those are handled by the SWRCB.

The SWRCB is also required to provide the Board with the name and address of each person or entity who is liable for a fee or expense, the amount of the fee or expense, and the due date.

The fees paid to the Board are deposited in the Water Rights Fund in the State Treasury.

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Proposed Law

This bill would repeal and add Section 1525 to, in part, require the SWRCB to adopt a fee schedule that imposes a **transactional fee** on each person or entity with business before the SWRCB, as specified. The transactional fee for the SWRCB's consideration of each filing, as identified, would be based on the SWRCB's estimate of its average actual cost in processing that type of document through to a final decision by the SWRCB.

This bill would also add Section 1526 to the Water Code to require the SWRCB to adopt a fee schedule that would impose an **annual fee** on each person or entity that holds a permit or license to appropriate water, or leases under Chapter 1.5 (commencing with Section 1020) of Part 1. The annual fee would be a charge per acre-foot of water that the permit or license holder may use during the applicable year for consumptive or non-consumptive uses under the permit or license. The SWRCB would be required to ensure that there is no duplication of annual fees imposed upon a permit holder or licensee who holds multiple permits or licenses authorizing diversion or use of the same water, and the fees, as among all water users against whom fees are assessed, are comparable per acre-foot of authorized diversion. The total revenue generated from annual fees under Section 1526 would be capped, as provided, and may be expended by the SWRCB only to fund the activities for which expenditures from the Water Rights Fund are authorized.

Section 1527 would also be added to provide that transactional and annual fees may only be imposed on or allocated to persons or entities that are lawful users of the water involved. Transactional and annual fees would not be allowed to be imposed on or allocated to any person or entity based on a permit or license that authorizes the appropriation of water for which that person or entity holds a riparian and pre-1914 water right for the same water. The SWRCB would be authorized to waive, in whole or in part, any transactional or annual fee required under Section 1525 or 1526 if the revenue otherwise generated from the fee is made available to the Division of Water Rights through appropriation from the General Fund.

Background

In 2003, Senate Bill 1049 (Chapter 741) added Chapter 8 of Part 2 of Division 2 to the Water Code to, among other things, require each person or entity who holds a permit or license to appropriate water, and each lessor of water, to pay an annual fee according to a fee schedule established by the SWRCB. Senate Bill 1049 was intended to revise the existing fee structure to appropriate water so that fee revenues replace all General Fund support budgeted for the SWRCB's program.

COMMENTS

1. **Sponsor and purpose.** This bill is sponsored by the author and is intended to address a fee system that lacks balance in funding and jeopardizes the ability for all people to have equal access to the Division of Water Rights (Division).

Specifically, Senate Bill 31 would require the Division to generate revenue based on the cost of transacting business. Transactional fees would be based upon the cost of providing the specific service involved (cost of service). All parties or entities with business before the Division would initially be subject to a transactional fee. The

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SWRCB would have the ability to relieve a party or entity from the transactional fees, provided that General Funds are available to cover the costs of that relief. This would allow for identified policy issues to be appropriately addressed, without redistributing the costs of such action to other fee payers.

2. **Suggested technical amendment.** With respect to the collection of water rights fees, it is suggested that Sections 1535(b) and 1539 be amended to correspond with the imposition of the transactional fee and annual fee imposed pursuant to Sections 1525 and 1526, respectively:

1535. (b) If a fee established under subdivision ~~(a)~~(b) of Section 1525, Section 1528, or Section 13160.1 is not paid when due, the board may cancel the application, registration, petition, request, or claim, or may refer the matter to the State Board of Equalization for collection of the unpaid fee.

1539. If a permit or license holder fails to pay an annual fee imposed pursuant to Section 1526 ~~subdivision (a) of Section 1525~~ for a period of five years, the board may revoke the permit or license in accordance with the procedures for revocation specified in Section 1241.

3. **The provisions of the bill would not be problematic to administer.** This bill simply revises the imposition of the annual fee. The Board would continue to collect the annual water rights fee and other fees referred for collection based on information provided by the SWRCB, which includes the name and address of each person or entity liable for a fee, the amount of the fee or expense, and the due date.
4. **Pending litigation.** The Northern California Water Association and the California Farm Bureau Federation filed lawsuits against the Board and the SWRCB in December 2003 and April 2004, respectively. These parties seek a ruling that the fee imposed by SB 1049 (Ch. 741, Stats. 2003) is unconstitutional and invalid on its face (i.e., that the fee imposed is an illegal tax). The lawsuits have been consolidated and the matter is scheduled for trial in April 2005.

COST ESTIMATE

Some administrative costs would be incurred in reprogramming if the format of the billing information provided to the Board by the SWRCB is revised or changed. An estimate of these costs is pending.

REVENUE ESTIMATE

This bill is written to cap the total revenue generated from annual fees imposed pursuant to Section 1526. For the 2005-06 fiscal year, the revenues could not exceed the lesser of 50 percent of the revenue levels set forth in the annual Budget Act or three million five hundred thousand dollars (\$3,500,000), the lesser of 20 percent of the revenue levels set forth in the annual Budget Act or one million four hundred thousand dollars (\$1,400,000) for the 2006-07 fiscal year. For each fiscal year thereafter, the revenue may not exceed the lesser of 5 percent of the revenue levels set forth in the annual Budget Act or three hundred fifty thousand dollars (\$350,000). Because the amount of the fee will be set forth in regulations that have not yet been prepared, it is not possible at this time to identify the different fees that would be due from each of the approximately 15,000 water rights holders subject to a fee.

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